

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFF SHORT,<sup>1</sup>

Petitioner Below-  
Appellant,

v.

THERESA SHORT,

Respondent Below-  
Appellee.

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§ No. 106, 2009

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§ Court Below—Family Court

§ of the State of Delaware,

§ in and for Kent County

§ File No. CK06-02786

§

§

Submitted: August 14, 2009

Decided: October 20, 2009<sup>2</sup>

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 20th day of October 2009, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Jeff Short (the "Father"), filed this appeal from the Family Court's decision awarding the parties' joint custody of their minor son with primary residential placement awarded to the appellee, Theresa Short (the "Mother"). On appeal, the Father's sole argument is that the Family Court abused its discretion in denying the Father's motion for a

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<sup>1</sup> The Court previously assigned pseudonyms to the parties.

<sup>2</sup> This Order is identical to the Order filed earlier today except that the caption has been changed to reflect that the trial court was in Kent County rather than New Castle County.

continuance of the scheduled custody hearing. We disagree. Accordingly, we affirm the Family Court's judgment.

(2) The record reflects that the Father filed a petition for custody in December 2006. A hearing was held in October 2007. The Mother did not appear. In her absence, the Family Court entered an order, dated October 10, 2007, awarding the parties joint custody with the Father receiving primary residential placement. A week later, the Mother filed an emergency motion to reopen the judgment on the ground that she had never received notice of the scheduled custody hearing. The Family Court granted the Mother's motion to reopen in March 2008. On December 22, 2008, the Family Court sent out a notice of the hearing on the Mother's motion to reopen, which was scheduled for January 29, 2009. On January 21, 2009, the Family Court received a motion for a continuance from the attorney retained by the Father to represent his interests in the property division proceedings following the parties' divorce. The motion reflected that counsel had not entered an appearance on the Father's behalf in the custody matter because he was not available on the date scheduled for the custody hearing. Counsel represented that, if the continuance request was granted, he intended to enter his appearance. On January 27, 2009, the Family Court denied the motion for a continuance.

(3) Both the Father and the Mother appeared at the hearing on January 29, 2009 without counsel. At the start of the hearing, the Father renewed his request for a continuance. The Family Court, noting that the request already had been denied, stated that the custody matter had been pending for over two years and again denied the Father's request.

(4) The Father's sole argument on appeal is that the Family Court erred in denying his motion for a continuance. We review that decision for abuse of discretion.<sup>3</sup> In this case, we find no merit to the Father's argument that the two-year delay, which the Family Court referenced in support of its denial of the continuance, was attributable solely to the Mother's failure to appear at the October 2007 hearing. The Mother promptly filed a motion to reopen the judgment that had been granted in her absence, and the Family Court granted that motion. The Father was on notice since March 2008, that the custody proceeding, which he initiated in December 2006, was still ongoing in the Family Court. He had months to retain counsel who could have become familiar with the facts of the custody case. The Father waited until the notice of the hearing was issued on December 22, 2008 to attempt to retain counsel. It was nearly a month after the notice was issued, and only a week before the scheduled hearing, that the Father sought a continuance.

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<sup>3</sup> *Stevenson v. Simons*, 2006 WL 2048487 (Del. July 21, 2006).

Under these circumstances, we find no abuse of the Family Court's discretion in denying the Father's request for a continuance.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice